

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Gary L. Smith Jr., et al.,)	Case No. CV 13-6262-JFW (VBKx)
)	
Plaintiff,)	
)	SCHEDULING AND CASE MANAGEMENT
v.)	ORDER
)	
Harbor Freight Tools, USA,)	
Inc.,)	
)	
Defendants.)	
_____)	

The purpose of this Order is to notify the parties and their counsel of the deadlines and the schedule that will govern this action. SEE THE LAST PAGE OF THIS ORDER FOR THE SPECIFIED DATES. Ordinarily, the dates set forth on the last page are determined after reviewing the parties' Joint Report or consultation with the parties at the Fed.R.Civ.P. 16(b) Scheduling Conference. Accordingly, the dates and requirements are firm. The Court is very unlikely to grant continuances, even if stipulated to by the parties, unless the parties establish good cause through a concrete showing. **Because this Order in some respects modifies the applicable Local Rules, counsel are advised to read it carefully to**

1 avoid default on the obligations established herein. Counsel
2 are advised to pay particular attention to the requirements
3 of the Court with respect to electronic filing, the filing of
4 motions for summary judgment, and the documents to be
5 submitted at the Pre-Trial Conference and Trial.

6 **1. ELECTRONIC FILING AND COURTESY COPIES**

7 All documents that are required to be filed in an
8 electronic format pursuant to the General Order Authorizing
9 Electronic Filing shall be filed electronically no later than
10 4:00 p.m. on the date due unless otherwise ordered by the
11 Court. Any documents filed electronically after 4:00 p.m. on
12 the date due will be considered late and may be stricken by
13 the Court. Any documents that counsel attempt to file
14 electronically which are improperly filed will not be
15 accepted by the Court.

16 Counsel are ORDERED to deliver **2 copies** of all documents
17 filed electronically to Chambers. For each document filed
18 electronically, one copy shall be marked "CHAMBERS COPY" and
19 the other copy shall be marked "COURTESY COPY." The
20 "CHAMBERS COPY" and "COURTESY COPY" are collectively referred
21 to herein as "Courtesy Copies." The Courtesy Copies of each
22 electronically filed document must include on each page the
23 running header created by the ECF system. In addition, on
24 the first page of each Courtesy Copy, in the space between
25 lines 1 - 7 to the right of the center, counsel shall include
26 the date the document was e-filed and the document number.
27 The Courtesy Copies shall be delivered to Chambers no later
28 than 10:00 a.m. on the next business day after the document

1 was electronically filed. All documents must be stapled or
2 bound by a two prong fastener, the electronic proof of
3 service must be attached as the last page of each document,
4 and the exhibits attached to any document must be tabbed.
5 Counsel shall not staple the "COURTESY COPY" and "CHAMBERS
6 COPY" together. The "COURTESY COPY" of all documents must be
7 three-hole punched at the left margin with the oversized
8 13/32" hole size, not the standard 9/32" hole size.

9 For any document that is not required to be filed
10 electronically, counsel are ORDERED to deliver 1 conformed
11 copy of the document, which shall be marked "COURTESY COPY,"
12 to Chambers **at the time of filing**.

13 When a proposed order accompanies an electronic filing, a
14 WordPerfect or Word copy of the proposed order, along with a
15 copy of the PDF electronically filed main document, shall be
16 e-mailed to JFW_Chambers@cacd.uscourts.gov. The subject line
17 of the e-mail shall be in the following format: court's
18 divisional office, year, case type, case number, document
19 control number assigned to the main document at the time of
20 filing, judge's initials and filer's (party) name. Failure
21 to comply with this requirement may result in the denial or
22 striking of the request or the Court may withhold ruling on
23 the request until the Court receives the required documents.

24 **2. DISCOVERY**

25 All discovery shall be completed by the discovery cut-off
26 date specified on the last page of this Order. **THIS IS NOT**
27 **THE DATE BY WHICH DISCOVERY REQUESTS MUST BE SERVED; IT IS**
28 **THE DATE BY WHICH ALL DISCOVERY, INCLUDING EXPERT DISCOVERY,**

1 **SHALL BE COMPLETED.** The Court does not enforce side
2 agreements to conduct discovery beyond the discovery cut-off
3 date.

4 Any motion challenging the adequacy of responses to
5 discovery must be heard sufficiently in advance of the
6 discovery cut-off date to permit the responses to be obtained
7 before that date if the motion is granted.

8 In an effort to provide further guidance to the parties,
9 the Court notes the following:

10 **(a) Depositions**

11 All depositions shall be scheduled to commence
12 sufficiently in advance of the discovery cut-off date to
13 permit their completion and to permit the deposing party
14 enough time to bring any discovery motions concerning the
15 deposition prior to the cut-off date.

16 **(b) Written Discovery**

17 All interrogatories, requests for production of
18 documents, and requests for admissions shall be served
19 sufficiently in advance of the discovery cut-off date to
20 permit the discovering party enough time to challenge (via
21 motion practice) responses deemed to be deficient.

22 **(c) Discovery Motions**

23 Whenever possible, the Court expects the parties to
24 resolve discovery issues among themselves in a courteous,
25 reasonable, and professional manner. If they do so, resort
26 to the Court for guidance in discovery is seldom necessary.
27 The Magistrate Judge assigned to this case will rule on
28 discovery motions and protective orders.

1 **(d) Expert Discovery**

2 If expert witnesses are to be called at trial, the
3 parties shall designate affirmative experts to be called at
4 trial and shall provide reports required by Fed.R.Civ.P.
5 26(a)(2)(B) not later than eight weeks prior to the discovery
6 cut-off date. Rebuttal expert witnesses shall be designated
7 and reports provided as required by Fed.R.Civ.P. 26(a)(2)(B)
8 not later than five weeks prior to the discovery cut-off
9 date. Any non-retained expert designated by a party as an
10 affirmative or rebuttal expert shall also prepare and provide
11 an expert report in the form described by Fed.R.Civ.P.
12 26(a)(2)(B). Expert witnesses will be bound by the opinions
13 expressed in their reports prepared in accordance with
14 Fed.R.Civ.P. 26(a)(2)(B) and will not be permitted to offer
15 new opinions at trial. Failure to timely comply with this
16 deadline will result in the expert being excluded at trial as
17 a witness.

18 **3. MOTIONS - GENERAL PROVISIONS**

19 All law and motion matters, except for motions in limine,
20 must be set for hearing (not filed) by the motion cut-off
21 date specified on the last page of this Order. The Court
22 will deny or strike late-filed motions. The title page of
23 all motions must state the hearing date and time for the
24 motion, the Pre-Trial Conference date, and the Trial date.

25 Once a party has noticed a motion for hearing on a
26 particular date, the hearing shall not be continued without
27 leave of Court. If the Court concludes that a motion can be
28

1 resolved without argument, the Court will notify the parties
2 in advance.

3 If counsel does not intend to oppose a motion, counsel
4 shall immediately inform the Courtroom Deputy by e-mail and
5 immediately file a Notice of Non-Opposition in accordance
6 with the Local Rules. The parties should note that failure
7 to timely respond to any motion shall be deemed by the Court
8 as consent to the granting of the motion. See Local Rules.

9 Ex parte practice is strongly discouraged. The
10 Court will require strict adherence to proper ex parte
11 procedures for any ex parte application filed with the Court.
12 See Local Rules and the Court's Standing Order.

13 **(a) Applications and Stipulations to Extend Time**

14 No applications or stipulations extending the time to
15 file any required document or to continue any date are
16 effective unless and until the Court approves them.
17 Applications and/or stipulations to extend the time to file
18 any required document or to continue any hearing, Pre-Trial
19 date, or the Trial date must set forth the following:

20 (i) the existing due date or hearing date, as well
21 as all dates currently set by the Court in this Order,
22 including the discovery cut-off date, the Pre-Trial
23 Conference date, and the Trial date;

24 (ii) the new dates proposed by the parties;

25 (iii) specific, concrete reasons supporting good
26 cause for granting the extension; and

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1 (iv) whether there have been prior requests for
2 extensions by any party, and whether those requests were
3 granted or denied by the Court.

4 All applications and stipulations must be accompanied by
5 a separate and independent proposed order which must be
6 submitted to the Court in accordance with the General Order
7 Authorizing Electronic Filing and this Order. Failure to
8 submit a separate proposed order may result in the denial of
9 the application or stipulation or the Court may withhold
10 ruling on the application or stipulation until the Court
11 receives a separate proposed order.

12 **(b) Joinder of Parties and Amendment of Pleadings**

13 The deadline for joining parties and amending pleadings
14 is sixty days from the date of this Order. Any motions to
15 join other parties or for leave to amend the pleadings shall
16 be filed within twenty days of the date of this Order so that
17 they can be heard and decided prior to the deadline.

18 In addition to the requirements of the Local Rules, all
19 motions to amend the pleadings shall: (1) state the effect of
20 the amendment; (2) be serially numbered to differentiate the
21 amendment from previous amendments; and (3) state the page,
22 line number(s), and wording of any proposed change or
23 addition of material. The parties shall deliver to Chambers
24 a redlined version of the proposed amended pleading
25 indicating all additions and/or deletions of material.

26 **(c) Withdrawal or Substitution of Counsel**

27 The Court will not grant a request for approval of
28 substitution of counsel after an action has been set for

1 trial unless: (1) counsel files the request using the most
2 recent version of the appropriate forms provided on the
3 Court's website; and (2) the request is accompanied by a
4 declaration signed by a substituting attorney indicating that
5 such attorney has been advised of the trial date and will be
6 prepared to proceed with trial as scheduled. Any request for
7 substitution of counsel which is not on the proper form or is
8 not accompanied by a declaration signed by a substituting
9 attorney as set forth above will be denied.

10 Counsel who wish to withdraw and substitute their client
11 *pro se* must file a regularly noticed motion to withdraw which
12 demonstrates good cause for the request to withdraw. The
13 Court will not consider such a motion unless: (1) the motion
14 is accompanied by a declaration signed by the client
15 indicating that the client consents to the withdrawal, has
16 been advised of the time and date of trial, and will be
17 prepared to represent themselves *pro se* on the scheduled
18 trial date; or (2) the Court is otherwise satisfied for good
19 cause shown that the attorney should be permitted to
20 withdraw.

21 **4. SUMMARY JUDGMENT MOTIONS**

22 The Court will only entertain ONE summary judgment motion
23 by a party. In the event a party believes that more than one
24 summary judgment motion is necessary to expedite the
25 resolution of issues in the action, the party must obtain
26 leave of court to file more than one summary judgment motion.
27 The Court will require strict adherence to the following
28 requirements:

1 **(a) Statement Of Uncontroverted Facts and Conclusions of**
2 **Law and Statement of Genuine Disputes of Material**
3 **Fact**

4 The Statement of Uncontroverted Facts and Conclusions of
5 Law is to be prepared in a two column format. The left hand
6 column should set forth the allegedly undisputed fact or
7 conclusion or law. The right hand column should set forth
8 the evidence that supports the factual statement or
9 conclusion of law. The factual statements and conclusions of
10 law should be set forth in sequentially numbered paragraphs.
11 Each paragraph should contain a narrowly focused statement of
12 fact or conclusion of law. Each numbered paragraph should
13 address a single subject in as concise a manner as possible.

14 The opposing party's Statement of Genuine Disputes of
15 Material Fact must track the movant's Statement of
16 Uncontroverted Facts exactly as prepared. The document must
17 be in two columns; the left hand column must restate the
18 allegedly undisputed fact, and the right hand column must
19 restate the moving party's evidence in support of the fact,
20 and indicate either undisputed or disputed. The opposing
21 party may dispute all or only a portion of the statement, but
22 if disputing only a portion, must clearly indicate what part
23 is being disputed. Where the opposing party is disputing the
24 fact in whole or part, the opposing party must, in the right
25 hand column, set forth the evidence controverting the fact.
26 Where the opposing party is disputing the fact on the basis
27 of an evidentiary objection, the party must cite to the
28 evidence alleged to be objectionable and state the ground of

1 the objection and nothing more. Counsel are reminded that
2 unwarranted factual denials made in the context of a Summary
3 Judgment Motion are subject to Rule 11 sanctions. **No**
4 **argument should be set forth in this document.**

5 The opposing party may submit additional material facts
6 that bear on or relate to the issues raised by the movant,
7 which shall follow the format described above for the moving
8 party's Statement of Uncontroverted Facts. These additional
9 facts shall follow the movant's facts, shall continue in
10 sequentially numbered paragraphs (*i.e.*, if movant's last
11 statement of fact was set forth in paragraph 30, then the
12 first new fact will be set forth in paragraph 31), and the
13 evidence that supports the new fact shall be set forth in the
14 right hand column.

15 The moving party, together with its reply, shall file a
16 separate document entitled "Combined Statement of Facts" that
17 (1) restates the entirety of the opposing party's Statement
18 of Genuine Disputes of Material Fact and (2) responds to any
19 additional facts in the same manner and format that the
20 opposing party must follow in responding to the Statement of
21 Uncontroverted Facts, as described above.

22 **(b) Supporting Evidence**

23 No party should submit any evidence other than the
24 specific items of evidence or testimony necessary to support
25 or controvert a proposed statement of undisputed fact. Thus,
26 for example, entire sets of interrogatory responses, or
27 documents that do not specifically support or controvert
28 material in the Statements should not be submitted in support

1 of or in opposition to a motion for summary judgment. Any
2 such material will not be considered.

3 Evidence submitted in support of or in opposition to a
4 motion for summary judgment should be submitted either by way
5 of stipulation or as exhibits to declarations sufficient to
6 authenticate the proffered evidence, and should not be
7 attached to the memorandum of points and authorities. The
8 Court will accept counsel's authentication of deposition
9 transcripts, written discovery responses, and the receipt of
10 documents in discovery if the fact that the document was in
11 the opponent's possession is of independent significance.
12 Documentary evidence as to which there is no stipulation
13 regarding foundation must be accompanied by the testimony,
14 either by declaration or properly authenticated deposition
15 transcript, of a witness who can establish its authenticity.

16 All exhibits submitted in support of, and in opposition
17 to, a motion for summary judgment shall be consecutively
18 numbered; no two exhibits shall bear the same number. For
19 example, if the moving party submits one declaration and one
20 request for judicial notice, with four exhibits attached to
21 each document, the exhibits attached to the declaration shall
22 be marked 1 through 4, and the exhibits attached to the
23 request for judicial notice shall be marked 5 through 8. The
24 opposing party's exhibits shall then commence with number 9.
25 Immediately above or below the page number on each page of an
26 exhibit, the parties shall mark "[Party Name]'s Summary
27 Judgment Exhibit No. ____".
28

1 In addition to the foregoing, any party who offers
2 deposition testimony in support of or in opposition to a
3 motion for summary judgment shall prepare and file a separate
4 document for each deponent which contains only those
5 questions and answers, and any objections made at the time of
6 the deposition to those questions, that a party is relying on
7 to support their motion, with a citation to the appropriate
8 page and line number(s) in the deposition transcript.

9 The parties shall also deliver to chambers (but not file)
10 one copy of the entire deposition transcript (single-sided
11 condensed transcript including the word index) of each
12 deposition referenced. The deposition transcripts shall be
13 placed in a slant D-ring binder with each transcript
14 separated by a tab divider on the right side and three-hole
15 punched at the left margin with the oversized 13/32" hole
16 size, not the standard 9/32" hole size. The deposition
17 transcript binder shall include a Table of Contents and the
18 spine of each binder shall be labeled with its contents.

19 The Court's Courtesy Copies of all evidence in support of
20 or in opposition to a motion for summary judgment shall be
21 submitted in a separately bound volume and shall include a
22 Table of Contents. If the supporting evidence exceeds fifty
23 pages, each Courtesy Copy of the supporting evidence shall be
24 placed in a slant D-ring binder with each item of evidence
25 separated by a tab divider on the right side. All documents
26 contained in the binder must be three-hole punched with the
27 oversized 13/32" hole size, not the standard 9/32" hole size.
28 The spine of each binder shall be labeled with its contents.

1 In addition to the foregoing, the parties shall meet and
2 confer and prepare two binders, one binder containing a joint
3 set of all exhibits relied on by the parties in support of
4 and in opposition to the motion for summary judgment ("Joint
5 Exhibit Binder"), and the other binder containing a joint set
6 of all declarations relied on by the parties in support of
7 and in opposition to the motion for summary judgment ("Joint
8 Declarations Binder"). The parties shall deliver to Chambers
9 (but not file) one copy of both the Joint Exhibit Binder and
10 Joint Declarations Binder, which shall each be marked
11 "COURTESY COPY," in conjunction with the filing of the Reply.
12 The Joint Exhibit Binder and Joint Declarations Binder shall
13 include a Table of Contents, and the spine of each binder
14 shall be labeled with its contents.

15 The Table of Contents for the Joint Exhibit Binder and
16 Joint Declarations Binder shall specifically describe each
17 summary judgment exhibit or declaration and include a
18 citation to each paragraph number in the Combined Statement
19 of Facts that refers to the exhibit or declaration (e.g.
20 Plaintiff's Summary Judgment Exhibit No. 1 - Letter from John
21 Doe to Jane Doe dated January 1, 2007 Re: Reasons for Jane
22 Doe's termination) (Combined Statement of Facts Nos. 2, 8,
23 10). In preparing the Table of Contents, counsel should not
24 create a new set of exhibit numbers. Counsel shall use the
25 same exhibit numbers that were used to identify the documents
26 in the Motion for Summary Judgment.

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1 **(c) Objections to Evidence**

2 If a party disputes a fact based in whole or in part on
3 an evidentiary objection, the ground for the objection, as
4 indicated above, should be stated in the Statement of Genuine
5 Disputes of Material Fact or Combined Statement of Facts but
6 not argued in that document. Evidentiary objections are to
7 be addressed in a separate memorandum to be filed with the
8 opposition or reply brief of the party. This memorandum
9 should be organized to track the paragraph numbers of the
10 Statement of Genuine Disputes of Material Fact or Combined
11 Statement of Facts in sequence. It should identify the
12 specific item of evidence to which objection is made, or in
13 the case of deposition testimony it should quote the relevant
14 testimony, the ground for the objection, and a very brief
15 argument with citation to authority as to why the objection
16 is well taken. The following is an example of the format
17 contemplated by the Court:

18 Combined Statement of Facts Paragraph 10: Objection to
19 the supporting deposition testimony of Jane Smith [quote
20 testimony] at 60:1-10 on the grounds that the statement
21 constitutes inadmissible hearsay and no exception is
22 applicable. To the extent it is offered to prove her
23 state of mind, it is irrelevant because her state of mind
24 is not in issue. Fed. R. Evid. 801, 802.

25 **DO NOT SUBMIT BLANKET OR BOILERPLATE OBJECTIONS TO THE**
26 **OPPONENT'S STATEMENT OF FACTS. THESE WILL BE**
27 **DISREGARDED AND OVERRULED.**

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1 **(d) The Memorandum of Points and Authorities**

2 The movant's memorandum of points and authorities should
3 be in the usual form required under Local Rules and should
4 contain a narrative statement of facts as to those aspects of
5 the case that are before the Court. All facts should be
6 supported with citations to the paragraph number in the
7 Statement of Uncontroverted Facts that supports the factual
8 assertion and not to the underlying evidence.

9 Unless the case involves some unusual twist, the motion
10 need only contain a brief statement of the Fed.R.Civ.P. 56
11 standard; the Court is familiar with the Rule and with its
12 interpretation under *Celotex* and its progeny. If at all
13 possible, the argument should be organized to focus on the
14 pertinent elements of the claim(s) for relief or defense(s)
15 in issue, with the purpose of showing the existence or non-
16 existence of a genuine issue of material fact for trial on
17 that element of the claim or defense.

18 Likewise, the opposition memorandum of points and
19 authorities should be in the usual form required by the Local
20 Rules. Where the opposition memorandum sets forth facts,
21 those facts should be supported with citations to the
22 paragraph number in the Statement of Genuine Disputes of
23 Material Fact and not to the underlying evidence.

24 **(e) Proposed Statement of Decision**

25 Each party shall prepare a Proposed Statement of
26 Decision, which shall contain a statement of the relevant
27 facts and applicable law with citations to case law and the
28 record. The Proposed Statement of Decision shall not exceed

1 ten pages and shall be in a form that would be appropriate
2 for the Court to enter as its final order on the motion. The
3 Proposed Statement of Decision shall be submitted to the
4 Court in accordance with the General Order Authorizing
5 Electronic Filing.

6 **(f) Timing**

7 Parties should not wait until the motion cut-off date to
8 bring motions for summary judgment or partial summary
9 judgment. Early completion of non-expert discovery and
10 filing of motions for summary judgment may eliminate or
11 reduce the need for expensive expert depositions which are
12 normally conducted in the last stages of discovery.

13 **Caveat: If a party fails to respond to a Motion for**
14 **Summary Judgment, the Court will assume that the material**
15 **facts as claimed and adequately supported by the moving party**
16 **are admitted to exist without controversy, which may result**
17 **in the granting of the Motion for Summary Judgment.**

18 **5. MOTIONS IN LIMINE**

19 The Court will only entertain a maximum of five motions
20 in limine by a party. In the event a party believes that
21 more than five motions in limine are necessary, the party
22 must obtain leave of Court to file more than five motions in
23 limine. The Court will not hear or resolve motions in limine
24 that are disguised summary judgment motions. No application
25 to file under seal will be granted with respect to a motion
26 in limine or any documents submitted with the motion in
27 limine.

1 Before filing any motion in limine, counsel for the
2 parties shall confer in a good faith effort to eliminate the
3 necessity for hearing the motion in limine or to eliminate as
4 many of the disputes as possible. It shall be the
5 responsibility of counsel for the moving party to arrange for
6 this conference. The conference shall take place in person
7 within ten calendar days of service upon opposing counsel of
8 a letter requesting such conference, but in no event later
9 than twenty-one days before the Pre-Trial Conference. Unless
10 counsel agree otherwise, the conference shall take place at
11 the office of the counsel for the moving party. If both
12 counsel are not located in the same county in the Central
13 District, the conference may take place by telephone. The
14 moving party's letter shall identify the testimony, exhibits,
15 or other specific matters alleged to be inadmissible and/or
16 prejudicial, shall state briefly with respect to each such
17 matter the moving party's position (and provide any legal
18 authority which the moving party believes is dispositive),
19 and shall specify the terms of the order to be sought.

20 If counsel are unable to resolve their differences, they
21 shall prepare and file a separate, sequentially numbered
22 Joint Motion in Limine for each issue in dispute which
23 contains a clear caption which identifies the moving party
24 and the nature of the dispute (e.g., "Plaintiff's Motion in
25 Limine #1 to exclude the testimony of Defendant's expert").
26 Each Joint Motion in Limine shall consist of one document
27 signed by all counsel. The Joint Motion in Limine shall
28 contain a clear identification of the testimony, exhibits, or

1 other specific matters alleged to be inadmissible and/or
2 prejudicial and a statement of the specific prejudice that
3 will be suffered by the moving party if the motion is not
4 granted. The identification of the matters in dispute shall
5 be followed by each party's contentions and each party's
6 memorandum of points and authorities. The title page of the
7 Joint Motion in Limine must state the Pre-Trial Conference
8 date, hearing date for the motions in limine, and Trial date.

9 Joint Motions in Limine made for the purpose of
10 precluding the mention or display of inadmissible and/or
11 prejudicial matter in the presence of the jury shall be
12 accompanied by a declaration that includes the following:
13 (1) a clear identification of the specific matter alleged to
14 be inadmissible and/or prejudicial; (2) a representation to
15 the Court that the subject of the motion in limine has been
16 discussed with opposing counsel, and that opposing counsel
17 has either indicated that such matter will be mentioned or
18 displayed in the presence of the jury before it is admitted
19 in evidence or that counsel has refused to stipulate that
20 such matter will not be mentioned or displayed in the
21 presence of the jury unless and until it is admitted in
22 evidence; and (3) a statement of the specific prejudice that
23 will be suffered by the moving party if the motion in limine
24 is not granted.

25 Unless ordered by the Court, no supplemental or separate
26 memorandum of points and authorities shall be filed by either
27 party in connection with any motion in limine.

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1 The Court's Courtesy Copies of all evidence in support of
2 or in opposition to a motion in limine, including
3 declarations and exhibits to declarations, shall be submitted
4 in a separately bound volume and shall include a Table of
5 Contents. If the supporting evidence exceeds fifty pages,
6 each Courtesy Copy of the supporting evidence shall be placed
7 in a slant D-ring binder with each item of evidence separated
8 by a tab divider on the right side, and the spine of the
9 binder shall be labeled with its contents. All documents
10 contained in the binder must be three-hole punched with the
11 oversized 13/32" hole size, not the standard 9/32" hole size.

12 The Court will not consider any motion in limine in the
13 absence of a joint motion or a declaration from counsel for
14 the moving party establishing that opposing counsel: (a)
15 failed to confer in a timely manner; (b) failed to provide
16 the opposing party's portion of the joint motion in a timely
17 manner; or (c) refused to sign and return the joint motion
18 after the opposing party's portion was added.

19 Unless otherwise ordered by the Court, motions in limine
20 should be filed and will be heard on the dates specified on
21 the last page of this Order. Unless the Court in its
22 discretion otherwise allows, no motions in limine shall be
23 filed or heard on an ex parte basis, absent a showing of
24 irreparable injury or prejudice not attributable to the lack
25 of diligence of the moving party.

26 The failure of any counsel to comply with or cooperate in
27 the foregoing procedures will result in the imposition of
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1 sanctions, including a resolution of the issue against the
2 party refusing to cooperate.

3 **6. PRE-TRIAL CONFERENCE AND LOCAL RULE 16 FILINGS**

4 **(a) General Provisions**

5 The Pre-Trial Conference ("PTC") will be held on the date
6 specified on the last page of this Order, unless the Court
7 expressly waived a PTC. If adjustments in the Court's
8 calendar to accommodate congestion become necessary, the
9 Court may re-schedule the PTC instead of the trial date.
10 Therefore, the parties should assume that if the PTC goes
11 forward, the trial will go forward without continuance,
12 although some brief period of trailing may prove necessary.

13 The lead trial attorney on behalf of each party shall
14 attend both the PTC and all meetings of the parties in
15 preparation for the PTC, unless excused for good cause shown
16 in advance of the PTC.

17 A continuance of the PTC at the parties' request or by
18 stipulation is highly unlikely. **Specifically, failure to**
19 **complete discovery is not a ground for continuance.** In the
20 unlikely event that the Court agrees to continue the PTC, the
21 trial date is likely to be delayed as a result. If a change
22 in the trial date is necessitated or likely because of the
23 Court's calendar or otherwise, modifications of that date
24 will be discussed at the PTC.

25 At the PTC, the parties should be prepared to discuss
26 means of streamlining the trial, including, but not limited
27 to: bifurcation; presentation of foundational and non-
28 critical testimony and direct testimony by deposition

1 excerpts; narrative summaries and/or stipulations as to the
2 content of testimony; presentation of testimony on direct
3 examination by affidavit or by declaration subject to cross-
4 examination; and qualification of experts by admitted
5 resumes. The Court will also discuss settlement.

6 **(b) Form of Pre-Trial Conference Order ("PTCO")**

7 The proposed PTCO shall be filed by the date specified on
8 the last page of this Order. Adherence to this time
9 requirement is necessary for in-chambers preparation of the
10 matter. The form of the proposed PTCO shall comply with
11 Appendix A to the Local Rules and the following:

12 (i) Place in "ALL CAPS" and in **bold** the separately
13 numbered headings for each category in the PTCO (e.g., "**1.**
14 **THE PARTIES**" or "**7. CLAIMS AND DEFENSES OF THE PARTIES**").

15 (ii) Include a Table of Contents at the beginning.

16 (iii) In specifying the surviving pleadings, state
17 which claims or counterclaims have been dismissed or
18 abandoned (e.g., "Plaintiff's second cause of action for
19 breach of fiduciary duty has been dismissed."). Also, in
20 multiple party cases where not all claims or counterclaims
21 will be prosecuted against all remaining parties on the other
22 side, specify to which party each claim or counterclaim
23 is directed.

24 (iv) In drafting the PTCO, the Court expects that
25 the parties will attempt to agree on and set forth as many
26 uncontested facts as possible. A carefully drafted and
27 comprehensively stated stipulation of facts will assist the
28 Court in preparing for the Pre-Trial Conference.

1 (v) In specifying the parties' claims and defenses
2 in Section 7 of the PTCO, each party shall closely follow the
3 examples set forth in Appendix A of the Local Rules.

4 (vi) The Court may submit fact issues to the jury in
5 the form of findings on a special verdict form. The issues
6 of fact should track the elements of a claim or defense on
7 which the jury will be required to make findings.

8 (vii) If expert witnesses are to be called at trial,
9 each party must list and identify its respective expert
10 witnesses, both retained and non-retained. Failure of a
11 party to list and identify an expert witness in the PTCO
12 shall preclude the party from calling that expert witness at
13 trial.

14 **(c) Rule 16 Filings; Memoranda; Witness Lists; Exhibit**
15 **Lists**

16 The parties must comply fully with the requirements of
17 Local Rule 16. They shall file carefully prepared Memoranda
18 of Contentions of Fact and Law (which may also serve as the
19 trial brief), along with their respective Witness Lists and
20 Exhibit Lists, all in accordance with the Local Rules. See
21 the last page of this Order for applicable dates.

22 **(d) Summary of Witness Testimony and Time Estimates**

23 Counsel shall prepare a list of their witnesses,
24 including a brief summary (two to three paragraphs) of each
25 witness's expected testimony, an estimate of the length of
26 time needed for direct examination, and whether the witness
27 will testify by deposition or in person. Counsel shall
28 exchange these lists with opposing counsel. **Counsel shall**

1 jointly file a single list of witness testimony summaries,
2 including estimates for direct examination of their own
3 witnesses and estimates for cross-examination of opposing
4 witnesses. The joint witness testimony summaries shall be
5 filed at the same time counsel submit the PTCO. If a party
6 intends to offer deposition testimony into evidence at trial,
7 the party shall comply with the Local Rules.

8 **(e) Pre-Trial Exhibit Stipulation**

9 The parties shall prepare a Pre-Trial Exhibit Stipulation
10 which shall contain each party's numbered list of all trial
11 exhibits, with objections, if any, to each exhibit including
12 the basis of the objection and the offering party's response.
13 All exhibits to which there is no objection shall be deemed
14 admitted. The parties shall also identify each witness they
15 anticipate will testify about and/or lay the foundation for
16 the exhibit. All parties shall stipulate to the authenticity
17 of exhibits whenever possible, and the Pre-Trial Exhibit
18 Stipulation shall identify any exhibits for which
19 authenticity has not been stipulated to and the specific
20 reasons for the party's failure to stipulate.

21 The Stipulation shall be substantially in the following
22 form:

23 / / /

24 / / /

25 / / /

26 / / /

27 / / /

28 / / /

Pre-Trial Exhibit Stipulation

Plaintiff(s)' Exhibits

<u>Number</u>	<u>Description</u>	<u>Witness</u>	<u>If Objection, State Grounds</u>	<u>Response to Objection</u>
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Defendant(s)' Exhibits

<u>Number</u>	<u>Description</u>	<u>Witness</u>	<u>If Objection, State Grounds</u>	<u>Response to Objection</u>
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The Pre-Trial Exhibit Stipulation shall be filed at the same time counsel file the PTCO. Failure to comply with this paragraph shall constitute a waiver of all objections.

DO NOT SUBMIT BLANKET OR BOILERPLATE OBJECTIONS TO THE OPPOSING PARTY'S EXHIBITS. THESE WILL BE DISREGARDED AND OVERRULED.

(f) Jury Instructions, Verdict Forms, Special Interrogatories

Fourteen days before the required Local Rule 16-2 meeting, the parties shall exchange proposed jury instructions, verdict forms, and, if necessary, special interrogatories. Seven days before the meeting, counsel shall exchange written objections, if any, to the proposed jury instructions, verdict forms, and special interrogatories. At the required meeting, lead counsel shall confer with the objective of submitting one set of agreed upon instructions, a verdict form, and, if necessary, special interrogatories.

If lead counsel agree upon one complete set of jury instructions, they shall file a joint set of proposed jury instructions, arranged in a logical sequence with each instruction sequentially numbered, and identified as "Stipulated Instruction No. __ Re _____," with the blanks

1 filled in as appropriate. If the parties cannot agree upon
2 one complete set of jury instructions, they shall file the
3 following two joint documents with the Court:

4 (i) A joint set of proposed jury instructions
5 arranged in a logical sequence with each instruction
6 sequentially numbered. If undisputed, an instruction shall
7 be identified as "Stipulated Instruction No. __ Re _____,"
8 with the blanks filled in as appropriate. If disputed, each
9 alternate version of the disputed instruction shall be
10 inserted together (back to back) in their logical place in
11 the overall sequence. Each such disputed instruction shall
12 be identified as "Disputed Instruction No. __ Re _____
13 Proposed By _____," with the blanks filled in as
14 appropriate. All disputed versions of an instruction shall
15 bear the same instruction number. If a party does not have a
16 counter-version of an instruction and simply contends no such
17 instruction should be given, then that party should so state
18 (and explain why) on a separate page inserted in lieu of an
19 alternate version; and

20 (ii) A joint memorandum of law in support of each
21 party's disputed instructions, organized by instruction
22 number. The joint memorandum of law shall quote the text of
23 each disputed instruction and shall set forth each party's
24 respective position and legal authority, immediately after
25 the text of each disputed instruction.

26 Each proposed instruction, whether agreed upon or
27 disputed, shall (a) be set forth in full on a separate page;
28 (b) embrace only one subject or principle of law; (c) cite to

the legal authority for or source of the instruction; and (d) reference the claim for relief to which the instruction relates with a citation to Section 7 of the PTCO.

A Table of Contents shall be included with all jury instructions submitted to the Court. The Table of Contents shall set forth the following:

- (i) The number of the instruction;
- (ii) A brief title of the instruction;
- (iii) Whether it is undisputed or disputed;
- (iv) The source of the instruction; and
- (v) The page number of the instruction.

For example:

<u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page No.</u>
1	Burden of Proof (Undisputed)	9th Cir. Man. of Model Jury Instr. 5.1	5

The Court directs counsel to use the instructions from the Ninth Circuit Manual of Model Jury Instructions (West Publishing, most recent edition) where applicable. Where California law is to be applied and the above instructions are not applicable, the Court prefers counsel to use the Judicial Council of California Civil Jury Instructions ("CACI") (LexisNexis Matthew Bender, most recent edition). If neither of these sources is applicable, counsel are directed to use the instructions from O'Malley, Grenig and Lee, Federal Jury Practice and Instructions (West Group, most recent edition). Any modifications made to the original form instruction from the foregoing sources (or any other form

1 instructions) must be specifically identified, along with the
2 authority supporting the modification. **Counsel shall not**
3 **submit proposed preliminary instructions to be given to the**
4 **jury prior to opening statements.**

5 If the parties agree upon a verdict form and/or special
6 interrogatories, they shall file a joint verdict form and/or
7 special interrogatories, with the questions arranged in a
8 logical sequence. If the parties cannot agree upon a verdict
9 form and/or special interrogatories, they shall file a joint
10 document containing each party's alternative version along
11 with a brief explanation of each party's respective position.

12 The joint set of proposed jury instructions, the joint
13 memorandum of law, and verdict form(s) and/or special
14 interrogatories are to be filed with the PTCO and other Local
15 Rule 16 documents. Courtesy Copies shall be provided to the
16 Court in accordance with Section 1 of this Order. **In**
17 **addition, the parties shall e-mail the joint set of proposed**
18 **jury instructions, joint memorandum of law, and verdict**
19 **form(s) and/or special interrogatories in WordPerfect or Word**
20 **format to the Chambers' e-mail address**
21 **(JFW_Chambers@cacd.uscourts.gov) at the time of filing.**

22 Immediately after the Court's final ruling on the
23 disputed jury instructions, counsel shall file one final
24 "clean set" of jury instructions, which shall be sent into
25 the jury room for the jury's use during deliberations. The
26 "clean set" shall contain only the text of each instruction
27 set forth in full on each page, with the caption "Court's
28 Instruction No. ____" (eliminating supporting authority,

1 citations to the PTCO, etc.). Counsel shall also e-mail the
2 final "clean set" of jury instructions in WordPerfect or Word
3 format to the Chambers' e-mail address
4 (JFW_Chambers@cacd.uscourts.gov) at the time of filing.

5 **Caveat:** The failure of any counsel to comply with or
6 cooperate in all of the foregoing procedures regarding jury
7 instructions and/or verdict forms will constitute a waiver of
8 all objections to the jury instructions and/or verdict form
9 used by the Court.

10 **(g) Real-Time Reporting Requirement**

11 Each party must file with the Court, at the same time
12 counsel submit the PTCO, a document for the Court Reporter
13 which contains proper names, unusual or scientific terms, or
14 any foreign or uncommon words that are likely to be used by
15 the parties during the PTC and the Trial. Each party shall
16 also e-mail a copy of the document to the Chambers' e-mail
17 address (JFW_Chambers@cacd.uscourts.gov) at the time of
18 filing.

19 **(h) Joint Statement of the Case and Requests for Voir**
20 **Dire**

21 At the Pre-Trial Conference, the parties shall file their
22 proposed voir dire questions and their joint statement of the
23 case which the Court shall read to all prospective jurors
24 prior to the commencement of voir dire. The statement should
25 be not longer than two or three paragraphs.

26 The Court conducts voir dire of all prospective jurors.
27 The parties need not submit requests for standard voir dire
28 questions, such as education, current occupation, marital

1 status, prior jury service, etc., but should include only
2 proposed questions specifically tailored to the parties and
3 issues of the case.

4 **7. COURT TRIALS**

5 **(a) Declarations of Witness Direct Testimony**

6 Counsel in non-jury trials shall submit the direct
7 testimony of their witnesses in writing in a declaration
8 executed under penalty of perjury. These declarations shall
9 be in admissible form with an appropriate foundation
10 established for the declarant's statements. Paragraphs in
11 each declaration shall be numbered consecutively to
12 facilitate the identification of paragraphs for evidentiary
13 objections. Any exhibits which are attached to a witness
14 declaration shall be numbered consistently with the number of
15 the exhibit on the Joint Exhibit List.

16 Counsel are to exchange and file these declarations at
17 least twelve calendar days before trial, unless otherwise
18 ordered by the Court. Courtesy Copies shall be provided to
19 the Court in accordance with Section 1 of this Order.
20 Courtesy Copies shall be submitted to the Court in a slant D-
21 ring binder with each declaration separated by a tab divider
22 on the right side. All documents must be three-hole punched
23 with the oversized 13/32" hole size, not the standard 9/32"
24 hole size. The binders shall also contain a Table of
25 Contents listing the declarations contained therein, and the
26 spine of the binder shall be labeled with its contents.

27 Eight calendar days before trial, counsel may file
28 evidentiary objections to those declarations. Counsel shall

1 prepare a separate document for each declaration for which
2 they have an evidentiary objection in which they shall quote
3 the specific language from the declaration to which they
4 object, followed by the objection and any relevant argument.
5 Counsel shall file any reply or response to the objections by
6 noon on the fifth calendar day before trial. Courtesy Copies
7 shall be provided to the Court in accordance with Section 1
8 of this Order. **DO NOT SUBMIT BLANKET OR BOILERPLATE**
9 **OBJECTIONS TO THE OPPOSING PARTY'S WITNESS DECLARATIONS.**
10 **THESE WILL BE DISREGARDED AND OVERRULED.**

11 At trial, the Court will rule on the evidentiary
12 objections and, depending upon the ruling, the declarations
13 will be received in evidence, either in whole or in part, or
14 rejected. Counsel will then conduct the cross-examination
15 and re-direct examination at trial.

16 Failure to comply with the terms of this Order will
17 result in sanctions or the Court may refuse to allow that
18 witness to testify.

19 **(b) Trial Briefs**

20 Counsel for each party shall file and serve a trial
21 brief, not to exceed 15 pages in length, fourteen calendar
22 days before trial.

23 **(c) Findings of Fact and Conclusions of Law**

24 Counsel for each party shall file and serve initial
25 proposed findings of fact and conclusions of law fourteen
26 calendar days before trial. Counsel for each party shall
27 also e-mail a copy of their proposed findings of fact and
28 conclusions of law to the Chambers' e-mail address

1 (JFW_Chambers@cacd.uscourts.gov) on the date due. Counsel
2 for each party shall then:

- 3 (i) Underline in red the portions which it
4 disputes;
5 (ii) Underline in blue the portions which it
6 admits; and
7 (iii) Underline in yellow the portions which it does
8 not dispute, but deems irrelevant.

9 Counsel may agree with a part of a finding or conclusion,
10 disagree with a part of it, and/or consider a part of it
11 irrelevant.

12 Two marked copies of opposing counsel's proposed findings
13 of fact and conclusions of law shall be filed with the Court
14 seven calendar days before trial and one marked copy shall be
15 served on opposing counsel. Courtesy Copies shall be
16 provided to the Court in accordance with Section 1 of this
17 Order.

18 **8. SETTLEMENT**

19 This Court will not conduct settlement conferences in
20 non-jury cases which the Court will try unless counsel for
21 all parties and their respective clients agree either in
22 writing or on the record. In jury cases, the Court will
23 conduct a settlement conference at the parties' joint request
24 if three conditions exist:

25 (a) The parties are satisfied that the fact issues in
26 the case will be tried to a jury;

27 (b) All significant pre-trial rulings which the Court
28 must make have been made; and

1 (c) The parties desire the Court to conduct the
2 conference, understanding that if settlement fails, the Court
3 will preside over trial of the case.

4 The parties must file a Status Report re: Settlement at
5 the time they lodge the Proposed Pre-Trial Conference Order.
6 The Status Report shall include the name and phone number of
7 the Settlement Officer who assisted the parties with their
8 settlement conference.

9 **Caveat:** If counsel fail to cooperate in the preparation
10 of the required Pre-Trial documents, fail to file the
11 required Pre-Trial documents, or fail to appear at the Pre-
12 Trial Conference and such failure is not otherwise
13 satisfactorily explained to the Court: (a) the cause shall
14 stand dismissed for failure to prosecute if such failure
15 occurs on the part of the plaintiff; (b) default judgment
16 shall be entered if such failure occurs on the part of the
17 defendant; or (c) the Court may take such action as it deems
18 appropriate.

19 IT IS SO ORDERED.

20 DATED: December 5, 2013

21 
22 JOHN F. WALTER
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28

JUDGE JOHN F. WALTER
SCHEDULE OF TRIAL AND PRE-TRIAL DATES

Matter	Time	Weeks before trial	Plaintiff(s) (Request)	Defendant(s) (Request)	Court Order
Trial (jury) Estimated length: <u>4</u> days	8:30 am				10/7/14
[Jury trial] Hearing on Motions in Limine; Hearing on Disputed Jury Instructions	10:00 am				9/26/14
[Court trial] Hearing on Motions in Limine	10:00 am				X
Pre-Trial Conference; File Proposed Voir Dire Qs and Agreed-to Statement of Case	10:00 am				9/19/14
Submit Pre-Trial Conf. Order; File Motions in Limine; Memo of Contentions of Fact and Law; Pre-Trial Exhibit Stipulation; Summary of Witness Testimony and Time Estimates; File Status Report re: Settlement; File Agreed Upon Set of Jury Instructions and Verdict Forms; File Joint Statement re Disputed Instructions, Verdicts, etc.					9/8/14
Last day for hearing motions *	1:30 pm				8/11/14
Discovery cut-off					8/1/14

**ADDITIONAL MATTERS TO BE DETERMINED AT SCHEDULING
CONFERENCE**

Last day to conduct Settlement Conference					4/14/14
Last day to file Joint Report re: results of Settlement Conference					4/21/14

* Motions for class certification shall be filed in accordance with Local Rule 23-3.